

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES PARSONS, INDIVIDUALLY AND
AS SPECIAL ADMINISTRATOR OF THE
ESTATE OF CAROLYN LEE PARSONS, *et
al.*,

Case No.: 2:19-cv-01189-APG-EJY

Order Denying Defendants' Motion for Reconsideration

Plaintiffs

[ECF No. 107]

V.

COLT'S MANUFACTURING COMPANY,
LLC, *et al.*,

Defendants

10 The defendants move for reconsideration of my order denying their motion to dismiss
11 plaintiffs James and Ann-Marie Parsons' wrongful death claim. ECF No. 98. They argue that I
12 committed clear error by failing to apply *Chevron* deference to the Bureau of Alcohol, Tobacco,
13 Firearms and Explosives' (ATF) Final Rule on Bump-Stock-Style Devices (the Bump Stock
14 Rule) and other rulings interpreting the definition of a machine gun. They argue that, if given
15 proper deference, these agency interpretations mandate dismissal of the wrongful death claim as
16 barred under the Protection of Lawful Commerce in Arms Act (PLCAA). I deny the defendants'
17 motion because the Bump Stock Rule and other ATF rulings are not eligible for *Chevron*
18 deference or do not merit dismissal of the Parsons' wrongful death claim.

I. BACKGROUND

20 The Parsons assert a wrongful death claim against the defendants for manufacturing the
21 AR-15 weapons used to kill their daughter in the October 1, 2019 Las Vegas shooting. ECF No.
22 1 at 29-32. The defendants moved to dismiss that claim as barred under the PLCAA. ECF No.
23 80. In relevant part, the PLCAA only permits “action[s] in which a manufacturer or seller of a

1 [firearm] knowingly violated a State or Federal statute applicable to the sale or marketing of the
2 product, and the violation was a proximate cause of the harm for which relief is sought.” 15
3 U.S.C. § 7903(5)(A)(iii). The Parsons argued that the PLCAA permits their action because they
4 alleged that the defendants knowingly violated federal and state machine gun prohibitions. *See*
5 18 U.S.C. § 922(b)(4); Nev. Rev. Stat. § 202.350(1)(b). For purposes of the federal prohibition,
6 “machinegun” is defined as “any weapon which shoots, is designed to shoot, or can be readily
7 restored to shoot, automatically more than one shot, without manual reloading, by a single
8 function of the trigger.” 26 U.S.C. § 5845(b).

9 The defendants pointed to several ATF rulings interpreting this definition and its
10 regulatory counterpart. ECF No. 80 at 16-17. Ruling 82-2 defined the term “designed to shoot”
11 as “possess[ing] design features which facilitate full automatic fire by simple modification or
12 elimination of existing component parts.” Ruling 81-4 addressed whether an AR-15 Auto Sear
13 conversion kit consisting of a “sear mounting body, sear, return spring, and pivot pin” was “a
14 combination of parts designed and intended for use in converting a weapon” And Ruling
15 2006-2 addressed whether an early bump stock device was “a part designed and intended solely
16 and exclusively, or combination of parts designed and intended, for use in converting a weapon
17 into a machinegun.” The defendants provided me no information on how the ATF reached these
18 determinations in the briefing on the motion to dismiss.

19 The defendants also pointed to the ATF’s Bump Stock Rule, arguing that bump stocks
20 were legal at all times relevant to this lawsuit. ECF No. 80 at 17-19. Prior to the Bump Stock
21 Rule, the ATF had issued ten letter rulings concluding that bump stocks themselves were not
22 machine guns. 83 Fed. Reg. 66514-01, 66517. But after the October 1 shooting, the ATF
23 promulgated the Bump Stock Rule to “clarif[y]” the statutory definition of machine gun:

1 For purposes of this definition, the term “automatically” as it
 2 modifies “shoots, is designed to shoot, or can be readily restored to
 3 shoot,” means functioning as the result of a self-acting or self-
 4 regulating mechanism that allows the firing of multiple rounds
 5 through a single function of the trigger; and “single function of the
 6 trigger” means a single pull of the trigger and analogous motions.
 7 The term “machine gun” includes a bump-stock-type device, i.e., a
 8 device that allows a semi-automatic firearm to shoot more than one
 9 shot with a single pull of the trigger by harnessing the recoil
 10 energy of the semi-automatic firearm to which it is affixed so that
 11 the trigger resets and continues firing without additional physical
 12 manipulation of the trigger by the shooter.

8 *Id.* at 66543, 66554. The defendants did not argue, as they do now, that the Bump Stock Rule, if
 9 afforded *Chevron* deference, mandates dismissal of the plaintiffs’ claims.

10 I denied the defendants’ motion to dismiss because the Parsons pleaded numerous facts
 11 showing a plausible claim for relief, including “the defendants’ use of stocks that can be easily
 12 replaced with bump stocks, the defendants’ marketing of the AR-15’s modularity and military
 13 bona fides, the defendants’ knowledge that commercially-available bump stocks enabled AR-15s
 14 to fire automatically, Colt’s agreement with Slide Fire [regarding the sale of a Colt Competition
 15 AR-15 with an integrated bump stock], and Christensen Arms’ recognition that the AR-15 could
 16 be modified to fire automatically.” ECF No. 98 at 9. The defendants now move for
 17 reconsideration. ECF No. 107. I decline to reconsider my previous ruling.

18 **II. DISCUSSION**

19 **A. Reconsideration Standard**

20 A district court “possesses the inherent procedural power to reconsider, rescind, or
 21 modify an interlocutory order for cause seen by it to be sufficient” so long as it has jurisdiction.
 22 *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001)
 23 (quotation and emphasis omitted); *see also Moses H. Cone Mem’l Hosp. v. Mercury Constr.*

1 *Corp.*, 460 U.S. 1, 12 (1983) (citing Fed. R. Civ. P. 54(b)). “Reconsideration is appropriate if
 2 the district court (1) is presented with newly discovered evidence, (2) committed clear error or
 3 the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling
 4 law.” *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993);
 5 *see also* LR 59–1(a). A district court may also reconsider its decision if “other, highly unusual,
 6 circumstances” warrant it. *Sch. Dist. No. 1J, Multnomah Cty., Or.*, 5 F.3d at 1263. However,
 7 “[a] motion for reconsideration is not an avenue to re-litigate the same issues and arguments
 8 upon which the court already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280,
 9 1288 (D. Nev. 2005). And a motion for reconsideration may not be based on arguments or
 10 evidence that could have been raised previously. *See Kona Enters., Inc. v. Estate of Bishop*, 229
 11 F.3d 877, 890 (9th Cir. 2000).

12 **B. *Chevron* and *Mead* Standards**

13 *Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.* prescribes a two-step test
 14 for judicial review of agency interpretations of federal statutes. 467 U.S. 837 (1984). First, I
 15 must assess “whether Congress has directly spoken to the precise question at issue.” *Id.* at 842.
 16 If so, “the court, as well as the agency, must give effect to the unambiguously expressed intent of
 17 Congress.” *Id.* at 842-43. If “the statute is silent or ambiguous with respect to the specific issue,”
 18 *Chevron*’s second step requires me to defer to the agency’s interpretation as long as it is “based
 19 on a permissible construction of the statute.” *Id.* at 843.

20 However, the Supreme Court clarified in *United States v. Mead Corporation* that
 21 *Chevron* applies only when (1) “it appears that Congress delegated authority to the agency
 22 generally to make rules carrying the force of law” and (2) “the agency interpretation claiming
 23 deference was promulgated in the exercise of that authority.” 533 U.S. 218, 226-27 (2001). An

1 agency interpretation may carry the force of law even if it is reached through a “means less
2 formal than ‘notice-and-comment’ rulemaking.” *Barnhart v. Walton*, 535 U.S. 212, 221 (2002).
3 In making this assessment, I must look to the “interstitial nature of the legal question, the related
4 expertise of the Agency, the importance of the question to administration of the statute, the
5 complexity of that administration, and the careful consideration the Agency has given the
6 question over a long period of time.” *Id.* at 222.

7 **C. ATF Rulings**

8 With respect to the first *Mead* requirement, Congress delegated authority to administer
9 the National Firearms Act (NFA) to the Attorney General, who in turn delegated that authority to
10 the ATF. 26 U.S.C. § 7801(a)(2)(A); 28 C.F.R. § 0.130(a). The defendants argue that although
11 not the product of notice and comment proceedings, the ATF rulings satisfy the second *Mead*
12 requirement because they were “enacted in furtherance of [the ATF’s] duty to interpret and
13 administer the NFA.” ECF No. 107 at 8 (quotation omitted). The defendants point to a Western
14 District of Washington decision concluding that a similar ruling was eligible for *Chevron*
15 deference. *Id.* at 7 (citing *P.W. Arms, Inc. v. U.S.*, No. 2:15-cv-01990, 2016 WL 9526687 (W.D.
16 Wash. Aug. 10, 2016)). But the judge in that case had the benefit of the parties addressing the
17 ATF’s process in coming to its ruling, which he had discussed in detail in a prior order. *P.W.*
18 *Arms*, 2016 WL 9526687, at *8 (“Finally, as discussed in this Court’s previous order, the Form 6
19 process by the ATF involves careful review of applications, inspection of shipped materials, and
20 testing and consideration of the shipped materials.”).

21 Here, the defendants pointed me in their underlying motion to informal rulings appearing
22 on the ATF’s website without any context for understanding how they were decided. *See* ECF
23 No. 80 at 16-17 (linking to the ATF website). Even in their motion to reconsider, the defendants

1 still fail to explain the ATF's decision-making process. ECF No. 107 at 7-8. So I have no basis
2 to evaluate "the careful consideration the Agency has given the question over a long period of
3 time." *Barnhart*, 535 U.S. at 222; *see also Innovator Enterprises, Inc. v. Jones*, 28 F. Supp. 3d
4 14, 22 (D.D.C. 2014) (denying *Chevron* deference to a "brief and informal" ATF classification
5 letter containing "hardly any reasoning"). Because the defendants did not, and still do not, show
6 that the rulings are eligible for *Chevron* deference, I deny this aspect of their motion.

7 As independent grounds for my earlier decision, I noted in my prior order that passing
8 references to weapons as semi-automatic rifles prior to installation of third-party components in
9 rulings 81-4 and 2006-2 did not support the defendants' position because the rulings addressed
10 the third-party components, not the rifles themselves. *Id.* These passing references do not merit
11 *Chevron* deference under *Mead*'s second step because they were not promulgated in the exercise
12 of the ATF's rulemaking authority. And even if accorded *Chevron* deference, Ruling 82-2 does
13 not merit reconsideration of my prior order because I found that the Parsons plausibly alleged
14 that the defendants' AR-15s "possess[] design features which facilitate full automatic fire by
15 simple modification or elimination of existing component parts[,]" as referenced in Ruling 82-2.
16 ECF No. 98 at 10 (citing ATF Ruling 82-2). So I deny the defendants' motion for these reasons
17 as well.

18 **D. Bump Stock Rule**

19 The defendants argue that because the Bump Stock Rule "clearly holds" that bump stocks
20 were legal at the time of the October 1 shooting, AR-15s that could be equipped with bump
21 stocks must have been legal as well. ECF No. 107 at 12-13. The Parsons respond that while the
22 Bump Stock Rule's prohibition of bump stocks is eligible for deference, its retroactive blessing
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1 of bump stocks prior to the issuance of the Bump Stock Rule is not eligible for deference under
2 the second step of *Mead*. ECF No. 110 at 5-8.

3 The defendants' argument is not focused on the text of the Bump Stock Rule's new
4 regulation itself, but the Bump Stock Rule's description of the ATF's prior interpretations of the
5 statutory terms "single function of the trigger" and "automatically." 83 Fed. Reg. 66514-01,
6 66517. But the defendants do not argue for deference to these interpretations themselves, which
7 the ATF admits "did not include extensive legal analysis of the statutory terms 'automatically' or
8 'single function of the trigger.'" *Id.* at 66516. The ATF describes these interpretations as
9 "mistakes." *Id.* at 66523. So to the extent the defendants argue that the ATF's descriptions of its
10 prior interpretations are entitled to deference, these descriptions were not promulgated in the
11 exercise of the ATF's rulemaking authority.

12 In reply, the defendants focus on recent circuit court decisions holding that the Bump
13 Stock Rule is "a legislative rule establishing when bump-stock possession will become unlawful,
14 not an interpretive rule indicating it has always been unlawful." *Guedes v. Bureau of Alcohol,*
15 *Tobacco, Firearms & Explosives*, 920 F.3d 1, 20 (D.C. Cir. 2019); *see also Aposhian v. Barr*,
16 958 F.3d 969, 980 (10th Cir. 2020). The Ninth Circuit has not addressed the question. The
17 defendants argue that retroactive application of such a legislative rule is impermissible in a civil
18 case like this one, citing the Northern District of California's decision in *Laurence v. United*
19 *States*, No. 3:93-cv-0381, 1993 WL 266657 (N.D. Cal. July 8, 1993). As the defendants
20 themselves state, "the plaintiff's theory of liability [in that case] was premised on the retroactive
21 application of a statutory standard of care created by legislation enacted after the alleged
22 misconduct." ECF No. 111 at 5 (citing *Laurence*, 1993 WL 266657, at *7). Here, however, the
23 Parsons' claim is contingent on a statute that has prohibited "any weapon which shoots, is

1 designed to shoot, or can be readily restored to shoot, automatically more than one shot, without
2 manual reloading, by a single function of the trigger” at all times relevant to this suit. 26 U.S.C.
3 § 5845(b); 18 U.S.C. § 922(b)(4). And I previously found that the Parsons have alleged facts
4 plausibly showing the defendants’ knowing violations of that statute prior to the ATF’s
5 promulgation of the Bump Stock Rule. ECF No. 98 at 9. Because neither the Bump Stock Rule
6 nor the other ATF rulings foreclose the Parsons’ claim that the defendants “knowingly violated”
7 the federal machine gun prohibition as a matter of law, I deny the defendants’ motion for
8 reconsideration.

9 **III. CONCLUSION**

10 I THEREFORE ORDER that the defendants’ **motion for reconsideration (ECF No.**
11 **107) is DENIED.**

12 DATED this 20th day of July, 2020.

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14 
15 ANDREW P. GORDON
16 UNITED STATES DISTRICT JUDGE
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